APPEAL NO. 041499
FILED AUGUST 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 12, 2004. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to and/or include a cervical injury, and that "[t]he extent of injury issue on extent to the cervical injury barred by res judicata." The claimant appealed both determinations on sufficiency of the evidence grounds. The respondent (self-insured) responded, urging affirmance. We note that while the self-insured's response is timely as such, it is not timely as an appeal.

DECISION

Affirmed as reformed.

We find that Conclusion of Law No. 4, dealing with res judicata, contains a typographical/grammatical error. It is clear from the hearing officer's Background Information and Findings of Fact Nos. 3 and 4 that the hearing officer determined that the extent-of-injury issue on extent to the cervical injury **is not** barred by res judicata, and we reform Conclusion of Law No. 4 to reflect the same. (Emphasis added.) Because the self-insured's response was not timely as an appeal, we decline to discuss the matter further.

The claimant had the burden to prove the extent of his compensable injury. Extent of injury presents a question of fact for the hearing officer to resolve. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. After review of all of the evidence presented, the hearing officer concluded that the claimant failed to establish that he sustained a cervical injury while in the course and scope of his employment on _____. Our review of the record reveals that the hearing officer's extent-of-injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed as reformed herein.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SD
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge